

HOUSE BILL No. 1627

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-22-1-2; IC 27-1; IC 27-4-5-2; IC 27-7-3; IC 27-13.

Synopsis: Insurance matters. Makes various changes to the law concerning insurer annual audited financial reporting, insurance administrator licensing, and consistency in compliance with laws by various types of insurers and health maintenance organizations.

Effective: July 1, 2009.

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January 16, 2009, read first time and referred to Committee on Insurance.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1627

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-22-1-2, AS AMENDED BY P.L.217-2007,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 2. Except as provided in this article, this article
4 does not apply to the following:

- 5 (1) The commission for higher education.
- 6 (2) A state educational institution. However, IC 5-22-5-9 and
7 IC 5-22-15 apply to a state educational institution.
- 8 (3) Military officers and military and armory boards of the state.
- 9 (4) An entity established by the general assembly as a body
10 corporate and politic. However, IC 5-22-15 applies to a body
11 corporate and politic.
- 12 (5) A local hospital authority under IC 5-1-4.
- 13 (6) A municipally owned utility under IC 8-1-11.1 or IC 8-1.5.
- 14 (7) Hospitals established and operated under IC 16-22-1 through
15 IC 16-22-5, IC 16-22-8, IC 16-23-1, or IC 16-24-1.
- 16 (8) A library board under IC 36-12-3-16(b).
- 17 (9) A local housing authority under IC 36-7-18.



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(10) Tax exempt Indiana nonprofit corporations leasing and operating a city market owned by a political subdivision.

(11) A person paying for a purchase or lease with funds other than public funds.

(12) A person that has entered into an agreement with a governmental body under IC 5-23.

(13) A municipality for the operation of municipal facilities used for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

(14) The department of financial institutions established by IC 28-11-1-1.

(15) The commissioner of the department of insurance in retaining an examiner for purposes of IC 27-1-3.1-9.

SECTION 2. IC 27-1-3.1-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 15. All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination under this chapter **(including trade secrets and information obtained from a federal agency, a foreign country, or under another state law)** are confidential for the purposes of IC 5-14-3-4, are not subject to subpoena, and may not be made public by the commissioner or any other person, except to the extent provided in section 14 of this chapter. However, access may also be granted to the National Association of Insurance Commissioners. Those parties must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.

SECTION 3. IC 27-1-3.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. As used in this chapter, "commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2. "accountant" means an independent certified public accountant or accounting firm that is:

(1) in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice;

(2) Canadian chartered if the insurer is a Canadian insurer;
or

(3) British chartered if the insurer is a British insurer.

SECTION 4. IC 27-1-3.5-1.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2009]: **Sec. 1.2.** As used in this chapter, "affiliate" means a person that, directly or indirectly through one (1) or more intermediaries:

- (1) controls;
 - (2) is controlled by; or
 - (3) is under common control with;
- another person.

SECTION 5. IC 27-1-3.5-1.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1.4.** As used in this chapter, "audit committee" means:

- (1) a body of independent members established by the board of directors of an insurer to oversee:

- (A) the accounting and financial reporting processes; and
- (B) audits of financial statements;

of the insurer;

- (2) if elected by the controlling person of an entity that controls an insurer and solely for purposes of this chapter, a body of independent members established by the board of directors of the entity to oversee:

- (A) the accounting and financial reporting processes; and
- (B) audits of financial statements;

of the entity; or

- (3) if a body is not established or an election made as described in subdivision (1) or (2), the entire board of directors of the insurer or entity that controls an insurer.

SECTION 6. IC 27-1-3.5-2.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 2.8. (a)** As used in this chapter, "independent member" means an individual who is a member of a committee or board established by an entity and meets all of the following requirements:

- (1) The individual does not, other than in the individual's capacity as a member of an audit committee, a board of directors, or another board committee of the entity, accept any consulting, advisory, or other compensation from the entity.

- (2) The individual is not associated with:

- (A) an affiliate of the entity; or
- (B) a subsidiary of the entity or affiliate.

(b) An individual who is not an independent member under subsection (a) may be considered to be an independent member for

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purposes of appointment to an audit committee of an insurer if:

- (1) another law requires participation on a board of directors by an individual who is not an independent member;
- (2) the individual is a member of the audit committee by virtue of the individual's participation on the board of directors described in subdivision (1); and
- (3) the individual is not an officer or employee of the insurer.

SECTION 7. IC 27-1-3.5-3.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3.1. As used in this chapter, "insurer" includes:

- (1) an insurer group; and
- (2) a person that controls an insurer or an insurer group.

SECTION 8. IC 27-1-3.5-3.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3.2. As used in this chapter, "insurer group" means a group of insurers that are:

- (1) authorized to transact insurance business in Indiana and subject to the reporting requirements of IC 27-1-23; or
- (2) identified by the management personnel of an insurer to assess the effectiveness of the insurer's internal control over financial reporting.

SECTION 9. IC 27-1-3.5-3.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3.3. As used in this chapter, "internal control over financial reporting" means a process, implemented by the board of directors, management personnel, and other personnel of an insurer, that is designed to provide reasonable assurance that the insurer's financial statements are reliable. The term includes policies and procedures that:

- (1) pertain to the maintenance of records to accurately and fairly reflect in reasonable detail:
 - (A) transactions involving; and
 - (B) disposition of; assets; and
- (2) provide reasonable assurance that:
 - (A) transactions are recorded as necessary to permit preparation of financial statements;
 - (B) receipts and expenditures are made only when authorized by management personnel and directors; and
 - (C) unauthorized acquisition, use, or disposition of assets that could have a material effect on financial statements is

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prevented or detected in a timely manner.

SECTION 10. IC 27-1-3.5-3.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 3.4. As used in this chapter, "SEC" refers to the federal Securities and Exchange Commission.**

SECTION 11. IC 27-1-3.5-3.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 3.6. As used in this chapter, "Section 404" refers to:**

(1) Section 404; and

(2) SEC regulations promulgated under Section 404; of the federal Sarbanes-Oxley Act of 2002.

SECTION 12. IC 27-1-3.5-3.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 3.7. As used in this chapter, "Section 404 report" means a report of the management of an insurer concerning internal control over financial reporting and the related attestation report of the insurer's accountant.**

SECTION 13. IC 27-1-3.5-3.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 3.8. As used in this chapter, "SOX compliant entity" means an entity that complies with all of the following provisions of the federal Sarbanes-Oxley Act of 2002:**

(1) The preapproval requirements of Section 201 (Section 10A(i) of the federal Securities Exchange Act of 1934).

(2) The audit committee independence requirements of Section 301 (Section 10A(m)(3) of the federal Securities Exchange Act of 1934).

(3) The internal control over financial reporting requirements of Section 404 (Item 308 of SEC regulation S-K).

SECTION 14. IC 27-1-3.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4. (a) As used in this chapter, "work papers" means the records kept by the independent auditor an accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached by the independent auditor's pertaining to the accountant's audit of the financial statements of a domestic an insurer.**

(b) The term includes any audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries that:

(1) are prepared or obtained by the independent auditor

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accountant in the course of ~~any the accountant's~~ audit of the financial statements of ~~a domestic an~~ insurer; and

(2) support the ~~independent auditor's~~ **accountant's** opinion. ~~on the domestic insurer's financial statements.~~

SECTION 15. IC 27-1-3.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) Except as provided in subsections (b) and (c), this chapter applies to all ~~domestic~~ insurers.

(b) ~~A domestic~~ **An** insurer that has:

(1) direct written premiums of less than one million dollars (\$1,000,000) in any calendar year; ~~and~~

(2) less than one thousand (1,000) policyholders or certificate holders of directly written policies nationwide at the end of a calendar year; **and**

(3) assumed premiums under contracts or treaties of reinsurance of less than one million dollars (\$1,000,000) in a calendar year;

is exempt from this chapter with respect to that year. However, the commissioner may require compliance with this chapter upon a finding that compliance with this chapter is necessary for the commissioner to carry out a statutory responsibility.

(c) A foreign or an alien insurer that files an **annual** audited financial report in another state ~~or country pursuant to that under the other state's or country's~~ requirement for **filing of annual** audited financial reports is exempt **from sections 6 through 13 of this chapter, except sections 7.2 and 7.4 of this chapter**, with respect to the year of ~~that the annual~~ audited financial report, ~~from the requirement to file an audited financial report with the commissioner under this chapter, if:~~

(1) the commissioner has found the other state's ~~or country's~~ requirement for **filing of** audited financial reports to be substantially similar to the requirements of this chapter;

(2) ~~copies a copy~~ of the **annual** audited financial report, the ~~report on significant deficiencies in communication of~~ internal ~~controls;~~ **control related matters noted in an audit**, and the accountant's letter of qualifications filed with the other state ~~or country~~ are filed with the commissioner in accordance with the filing dates set forth in sections ~~8;~~ **6**, 12, and 12.5 of this chapter; and

(3) a copy of a notification of an adverse financial condition report that is filed with the other state is filed with the commissioner within the time specified in section 11 of this

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(d) A foreign or an alien insurer that files a report of internal control over financial reporting in another state is exempt from filing the same report under this chapter if:

(1) the other state has reporting requirements substantially similar to this chapter; and

(2) the report is filed with the commissioner of insurance of the other state in a timely manner.

This (e) Subsection (c) or (d) does not prevent the commissioner from ordering, conducting, or performing examinations of ~~foreign or alien~~ insurers under the rules, regulations, and practices of the department **under IC 27-1-3.1.**

SECTION 16. IC 27-1-3.5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) ~~A domestic An~~ insurer shall have an audit by an ~~independent auditor every year~~ **accountant** and shall file an audited financial report with the commissioner every year ~~before~~ **not later than** June 1 immediately following the December 31 that ends the year reported on in the financial report. The commissioner may require ~~a domestic an~~ insurer to file an audited financial report earlier than June 1 if the commissioner gives the ~~domestic~~ insurer ninety (90) days advance notice of the earlier filing date.

(b) An extension of the June 1 filing date may be granted by the commissioner for thirty (30) days upon a showing by the insurer and ~~its independent auditor~~ **the insurer's accountant** of the reasons for requesting the extension and a determination by the commissioner that there is good cause for an extension. The request for an extension must be submitted in writing at least ten (10) days before the due date and must include sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

(c) If an extension is granted under subsection (b), a similar extension of thirty (30) days is granted for the filing of the insurer's report of internal control over financial reporting.

SECTION 17. IC 27-1-3.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) The annual audited financial report filed by ~~a domestic an~~ insurer under this chapter shall report:

(1) the financial position of the ~~domestic~~ insurer as of the end of the most recently ended calendar year; and

(2) the results of the ~~domestic~~ insurer's operations, cash flow, and changes in capital and surplus for that year;

in conformity with statutory accounting practices prescribed, or

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otherwise permitted, by the department of insurance.

~~(b)~~ The financial statements included in the annual audited financial report filed by a domestic insurer under this chapter shall be examined by an independent auditor. The independent auditor shall conduct its examination of the domestic insurer's financial statements in accordance with generally accepted auditing standards; and shall consider such other procedures illustrated in the Financial Condition Examiner's Handbook published by the National Association of Insurance Commissioners as the independent auditor considers necessary.

~~(c)~~ **(b)** An annual audited financial report filed by a domestic an insurer under this chapter must include the following:

- (1) The report of the insurer's ~~independent auditor~~; **accountant**.
- (2) A balance sheet reporting admitted assets, liabilities, capital, and surplus.
- (3) A statement of operations.
- (4) A statement of cash flow.
- (5) A statement of changes in capital and surplus.
- (6) Notes to financial statements. The notes must:

(A) be those required by the National Association of Insurance Commissioners' annual statement instructions and ~~any other notes required by statutory accounting practices~~; which must **the National Association of Insurance Commissioners' accounting practices and procedures manual; and**

(B) include the following:

~~(A)~~ a reconciliation of differences, if any, between the **audited statutory** financial statements included in the audited financial report and the annual **financial** statement filed by the insurer under IC 27-1-20-21, including a written description of the nature of these differences.

~~(B)~~ A summary of the ownership and relationships of the domestic insurer and all affiliated companies.

~~(d)~~ **(c)** The financial statements included in a domestic an insurer's **annual** audited financial report shall be prepared in the same form, and using language and groupings substantially the same, as the relevant sections of the annual statement of the insurer filed with the commissioner under IC 27-1-20-21.

~~(e)~~ **(d)** The financial statements included in a domestic an insurer's **annual** audited financial report must be comparative, presenting the amounts as of December 31 of the year of the report and comparative amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an **annual** audited

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1 financial report under this chapter, the comparative data may be
2 omitted.

3 SECTION 18. IC 27-1-3.5-7.2 IS ADDED TO THE INDIANA
4 CODE AS A NEW SECTION TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2009]: Sec. 7.2. (a) An insurer that is
6 required to file an annual audited financial report under this
7 chapter shall designate a group of individuals to constitute the
8 insurer's audit committee.

9 (b) Subsections (c) through (i) do not apply to:

10 (1) a foreign or an alien insurer that has a certificate of
11 authority to transact insurance business in Indiana; or

12 (2) an insurer that is a:

13 (A) SOX compliant entity; or

14 (B) direct or indirect wholly owned subsidiary of a SOX
15 compliant entity.

16 (c) If an independent member of an insurer's audit committee
17 ceases to be independent for reasons beyond the member's
18 reasonable control, the member, with notice from the insurer to the
19 commissioner, may remain an audit committee member until the
20 earlier of the date of the next annual meeting of the insurer or one
21 (1) year after the occurrence of the event that caused the member
22 to cease being an independent member.

23 (d) If the controlling person of an entity that ultimately controls
24 an insurer elects to designate an audit committee for the insurer as
25 described in section 1.4(2) of this chapter, the controlling person
26 shall provide written notice to the commissioner, including a
27 description of the basis for the election, before the insurer files the
28 insurer's annual audited financial report. The controlling person
29 may change an election by providing written notice of the change
30 to the commissioner, including a description of the basis for the
31 change. An election is effective until rescinded.

32 (e) The audit committee of an insurer is directly responsible for
33 the:

34 (1) appointment, compensation, supervision, and oversight of
35 the work; and

36 (2) resolution of financial reporting disagreements with the
37 insurer's management personnel;

38 of an accountant in the accountant's preparation or issuance of the
39 insurer's annual audited financial report or related work under
40 this chapter. An accountant reports directly to the audit committee
41 of the insurer.

42 (f) An insurer's audit committee shall require the accountant

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that performs an audit required by this chapter to timely report to the audit committee in accordance with Statement on Auditing Standards No. 61 of the American Institute of Certified Public Accountants, or its replacement, including all of the following:

(1) All significant accounting policies and material permitted practices.

(2) All material alternative treatments of financial information within statutory accounting principles that have been discussed with management personnel of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant.

(3) Other material written communications between the accountant and the management personnel of the insurer, including a management letter or schedule of unadjusted differences.

(g) If:

(1) an insurer is a member of an insurance holding company system that has an audit committee for the insurer members; and

(2) any substantial differences among insurer members in the insurance holding company system are identified to the audit committee;

the reports required by subsection (f) may be provided to the audit committee on an aggregate basis for all insurer members.

(h) The proportion of independent members of an audit committee must meet or exceed the following requirements:

(1) If the insurer's immediately preceding calendar year direct written and assumed premiums are not more than three hundred million dollars (\$300,000,000), there is no minimum requirement for independent members.

(2) If the insurer's immediately preceding calendar year direct written and assumed premiums are more than three hundred million dollars (\$300,000,000) and not more than five hundred million dollars (\$500,000,000), at least fifty percent (50%) of members must be independent members.

(3) If the insurer's immediately preceding calendar year direct written and assumed premiums are more than five hundred million dollars (\$500,000,000), at least seventy-five percent (75%) of members must be independent members.

However, the commissioner may increase the minimum requirement for independent members for an insurer that is in an RBC action level event under IC 27-1-36, meets one (1) or more

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criteria to be considered in a hazardous financial condition under 760 IAC 1-53 (as in effect on January 1, 2009), or otherwise exhibits qualities of a troubled insurer.

(i) An insurer that has direct written and assumed premiums (excluding premiums reinsured with the Federal Crop Insurance Corporation and National Flood Insurance Program) equal to less than five hundred million dollars (\$500,000,000) may apply to the commissioner for a waiver from the requirements of this section based on hardship. The insurer shall file the application with the:

(1) insurer's annual statement filing in the states in which the insurer is authorized to do business; and

(2) National Association of Insurance Commissioners.

If a nondomestic state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners.

SECTION 19. IC 27-1-3.5-7.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7.4. (a) A director or an officer of an insurer shall not, in connection with an audit, review, or communication required under this chapter, directly or indirectly:

(1) make or cause to be made a materially false or misleading statement to an accountant; or

(2) omit, or cause another person to omit, a material fact necessary to avoid misleading an accountant.

(b) A director or an officer of an insurer shall not directly or indirectly coerce, manipulate, mislead, or fraudulently influence an accountant while the accountant is engaged in the performance of an audit under this chapter if the director or officer knows or should know that the action could result in rendering the insurer's financial statements materially misleading. Actions prohibited under this subsection include actions to coerce, manipulate, mislead, or fraudulently influence the accountant:

(1) to issue or reissue a report on an insurer's financial statements that is not warranted due to material violations of statutory accounting principles, generally accepted auditing standards, or other professional or regulatory standards;

(2) not to perform audit, review, or other procedures required under generally accepted auditing standards or other professional standards;

(3) not to withdraw an issued report; or

(4) not to communicate matters to the insurer's audit

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committee.

SECTION 20. IC 27-1-3.5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) ~~A domestic An~~ insurer that is required by this chapter to file ~~an~~ annual audited financial ~~reports report~~ shall, not more than sixty (60) days after becoming subject to the requirement, register in writing with the commissioner the name and address of the ~~independent auditor~~ **accountant** retained by the insurer to conduct the annual ~~audits audit~~ required by this chapter. ~~The domestic insurer shall continuously ensure that the information provided to the commissioner under this section is accurate; and shall inform the commissioner in writing of any change in the identity or address of its independent auditor. An insurer that does not have an accountant on retainer on July 1, 2009, shall register the name and address of the insurer's retained accountant at least six (6) months before the first date by which the insurer's first annual audited financial report is to be filed after June 30, 2009.~~

(b) ~~A domestic An~~ insurer shall obtain a letter from its independent ~~auditor the insurer's accountant~~ that:

(1) states that the ~~independent auditor accountant~~ is aware of the provisions of IC 27 and the administrative rules of the department of insurance **of the insurer's domiciliary state** that relate to ~~auditing~~, accounting and financial matters; and

(2) affirms that the ~~independent auditor accountant~~ will express ~~it's the accountant's~~ opinion on the financial statements ~~of the domestic insurer in the~~ terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the department, specifying such exceptions as the ~~independent auditor accountant~~ may believe appropriate.

The ~~domestic~~ insurer shall file a copy of this letter with the commissioner.

(c) If an ~~independent auditor accountant~~ that **served as the accountant for the immediately preceding annual** audited ~~the most recent~~ financial report filed by the insurer with the commissioner under this chapter subsequently ceases to be the ~~independent auditor accountant~~ for the insurer, the insurer shall:

(1) not more than five (5) business days after the cessation of the ~~independent auditor's accountant's~~ services, notify the commissioner in writing of the ~~identity and address of the new independent auditor; cessation;~~

(2) not more than ten (10) business days after the notification given ~~in~~ **under** subdivision (1), furnish the commissioner with a

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1 separate letter that states whether in the twenty-four (24) months
 2 preceding the ~~engagement cessation~~ of the ~~new independent~~
 3 ~~auditor accountant's services~~ there were any disagreements
 4 between the insurer and ~~its~~ **the former independent auditor**
 5 **accountant** on any matter of accounting principles or practices,
 6 financial statement disclosure, or auditing scope or procedure,
 7 which, if not resolved to the satisfaction of the former
 8 ~~independent auditor accountant~~, would have caused the former
 9 ~~independent auditor accountant~~ to make reference to the subject
 10 matter of the disagreement in **connection with** the former
 11 ~~independent auditor's statement of its accountant's opinion. on~~
 12 ~~the insurer's financial report; and; if there was such a~~
 13 ~~disagreement; provides a description of the disagreement.~~
 14 Disagreements required to be reported under this subdivision
 15 include those at the decision making level that were resolved:

16 (A) to the former accountant's satisfaction; and

17 (B) not to the former accountant's satisfaction; and

18 (3) comply with subsection (d).

19 For the purposes of this subsection, "decision making level" refers to
 20 the personnel of the insurer who are responsible for the presentation of
 21 the insurer's financial statements and the personnel of the ~~independent~~
 22 ~~auditor accountant~~ who are responsible for rendering the ~~opinion of~~
 23 ~~the auditor on the~~ insurer's **annual audited** financial report.

24 (d) ~~A domestic~~ **An** insurer subject to the provisions of subsection (c)
 25 shall:

26 (1) provide its former ~~independent auditor accountant~~ with a
 27 copy of the letter furnished to the commissioner under subsection
 28 (c)(2); and

29 (2) request in writing its former ~~independent auditor accountant~~
 30 to furnish a letter addressed to the insurer stating whether the
 31 former ~~independent auditor accountant~~ agrees with the
 32 statements contained in the letter furnished to the commissioner
 33 under subsection (c)(2) and, if not, stating the reasons for the
 34 former ~~independent auditor's accountant's~~ disagreement.

35 The ~~domestic~~ insurer shall furnish the commissioner with a copy of any
 36 responsive letter ~~it the insurer~~ receives from ~~its the insurer's~~ former
 37 ~~independent auditor within five (5) business days after the insurer~~
 38 ~~receives the accountant together with the insurer's own~~ letter.

39 SECTION 21. IC 27-1-3.5-9 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9. (a) **An accountant**
 41 **that audits an insurer's annual audited financial report filed under**
 42 **section 6 of this chapter must be recognized by the commissioner**

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1 **to be qualified to serve as the insurer's accountant.**

2 ~~(a)~~ **(b)** For the purposes of this chapter, the commissioner may not
3 recognize as ~~an independent auditor any a qualified accountant an~~
4 individual or a firm that: is not:

5 ~~(1)~~ a certified public accountant (if an individual) or made up of
6 certified public accountants (if a firm); or

7 ~~(2)~~ in good standing with:

8 ~~(A)~~ the American Institute of Certified Public Accountants;
9 and

10 ~~(B)~~ all of the authorities that license certified public
11 accountants and certified public accounting firms in the states
12 in which the individual or firm is licensed to practice:

13 **(1) is not an accountant under section 1 of this chapter; or**

14 **(2) has directly or indirectly entered into an indemnification**
15 **agreement with respect to the audit of an insurer.**

16 **(c) Except as otherwise provided in this chapter, the**
17 **commissioner shall recognize an accountant as qualified if the**
18 **accountant:**

19 **(1) is an accountant under section 1 of this chapter; and**

20 **(2) conforms to the standards contained in the code of**
21 **professional ethics of the American Institute of Certified**
22 **Public Accountants and the requirements of the Indiana**
23 **board of accountancy under IC 25-2.1.**

24 **(d) A qualified accountant may enter into an agreement with an**
25 **insurer to have disputes between the accountant and the insurer**
26 **related to an audit resolved by mediation or arbitration. However,**
27 **if a delinquency proceeding is commenced against the insurer**
28 **under IC 27-9, a mediation or arbitration provision operates only**
29 **at the option of the statutory successor of the insurer.**

30 ~~(b)~~ **(e)** A partner or other individual **who is primarily** responsible
31 **for rendering a report conducting an audit** may not act in that capacity
32 for more than ~~seven (7)~~ **five (5)** consecutive years. ~~An~~ **The** individual
33 **who has been responsible for rendering a report for seven (7) years** is
34 **disqualified from acting in that or a similar capacity for the same**
35 **company or its insurance subsidiaries or affiliates for two (2) a period**
36 **of five (5) consecutive years. A domestic An** insurer may, **not more**
37 **than thirty (30) days before the end of a calendar year,** apply to the
38 commissioner and request to be exempted from the ~~seven (7)~~ **for relief**
39 **from the five (5) year rotation requirement on the basis of unusual**
40 **circumstances. The commissioner may consider the following factors**
41 **in determining if relief should be granted:**

42 **(1) The number of partners, expertise of the partners, or number**

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of insurance clients in the currently registered firm.

(2) The premium volume of the ~~domestic~~ insurer.

(3) The number of jurisdictions in which the ~~domestic~~ insurer transacts business.

(f) If the commissioner has granted an insurer any relief from the requirements of subsection (e), the insurer shall, with the insurer's annual statement filing, file evidence of the relief with the:

(1) states in which the insurer is authorized to do business; and

(2) National Association of Insurance Commissioners.

If a nondomestic state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the grant of relief in an electronic format that is acceptable to the National Association of Insurance Commissioners.

(g) The commissioner may not recognize as an independent auditor or a qualified accountant, nor accept an annual audited financial report prepared in whole or part by, a person who to whom any of the following applies:

(1) The person has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act under federal law (18 U.S.C. 1961 through 1968) or state law (IC 35-45-6) or any dishonest conduct or practices under federal or state law.

(2) The person has been found to have violated the insurance law of this state with respect to any previous reports submitted under this chapter. or

(3) The person has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under this chapter.

(4) The person provides to the insurer, contemporaneously with the audit, any of the following nonaudit services:

(A) Bookkeeping, auditing, or other services related to the accounting records or financial statements of the insurer.

(B) Financial information systems design and implementation.

(C) Appraisal or valuation services, fairness opinions, or contribution in kind reports.

(D) Actuarially oriented advisory services involving the determination of amounts recorded in the financial statements of the insurer. This clause does not include the accountant's assistance to an insurer in understanding the

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methods, assumptions, and inputs used in the determination of amounts recorded in the financial statements if it is reasonable to conclude that the assistance will not be subject to audit procedures during an audit of the insurer's financial statements. Additionally, this clause does not include the issuance by the accountant's actuary of an actuarial opinion or certification concerning an insurer's reserves if the following conditions are met:

(i) Neither the accountant nor the actuary has performed any management functions or made any management decisions for the insurer.

(ii) The insurer has competent personnel, or engages a third party actuary, to estimate the reserves for which management personnel take responsibility.

(iii) The actuary tests the reasonableness of the reserves after the insurer's management personnel have determined the amount of the reserves.

(E) Internal audit outsourcing services.

(F) Management functions or human resources.

(G) Broker, dealer, investment adviser, or investment banking services.

(H) Legal services or expert services unrelated to the audit.

(I) Advocacy services.

(J) Any other services that the commissioner determines by rule are impermissible.

(5) The person employed, as a partner or senior manager who participated in the audit of the insurer during the one (1) year period preceding the date on which the most current annual audited financial report is due, a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or an individual who serves in an equivalent position for the insurer. However, an insurer may apply under subsection (m) to the commissioner for relief from the requirement of this subdivision on the basis of unusual circumstances.

(6) The person has functioned in the role of management for the insurer.

(7) The person has audited the person's own work.

(8) The person has served in an advocacy role for the insurer.

(h) An insurer that has direct written and assumed premiums equal to less than one hundred million dollars (\$100,000,000) in a calendar year may request an exemption from subsection (g) by

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1 filing with the commissioner a written statement of the reasons for
 2 the request. The commissioner may grant the exemption if the
 3 commissioner finds that compliance with subsection (g) would
 4 constitute a financial or organizational hardship on the insurer.

5 (i) A qualified accountant that performs an audit may perform
 6 for an insurer other nonaudit services, including tax services, that
 7 are not described in subsection (g) if the performance of the
 8 nonaudit services is preapproved by the insurer's audit committee
 9 under subsection (j).

10 (j) Audit services and nonaudit services provided by an
 11 accountant to an insurer must be preapproved by the insurer's
 12 audit committee. However, the requirement for preapproval of
 13 nonaudit services may be waived if:

14 (1) the insurer is:

15 (A) a SOX compliant entity; or

16 (B) a direct or indirect wholly owned subsidiary of a SOX
 17 compliant entity; or

18 (2) all of the following apply:

19 (A) The aggregate amount paid for the nonaudit services
 20 constitutes not more than five percent (5%) of the total
 21 amount of fees paid by the insurer to the accountant
 22 during the fiscal year in which the nonaudit services are
 23 provided.

24 (B) The insurer did not recognize at the time the
 25 accountant was engaged to serve as the insurer's
 26 accountant that the nonaudit services were nonaudit
 27 services.

28 (C) Before completion of the audit, the nonaudit services
 29 are promptly brought to the attention of the audit
 30 committee and approved by:

31 (i) the audit committee; or

32 (ii) one (1) or more members of the audit committee who
 33 are the members of the board of directors to whom
 34 authority to grant approvals has been delegated by the
 35 audit committee.

36 ~~(d)~~ (k) The commissioner may conduct a hearing under IC 4-21.5
 37 to determine whether an independent auditor engaged by a domestic
 38 insurer accountant is sufficiently independent of that domestic insurer
 39 to be capable of exercising independent judgment and qualified and,
 40 considering the evidence presented, may:

41 (1) rule that the accountant is not qualified for purposes of
 42 expressing an objective the accountant's opinion on the financial

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statements in the annual **audited** financial report filed by the insurer under this chapter; ~~if the commissioner determines that the auditor is not sufficiently independent of the insurer, the commissioner shall and~~

(2) require the insurer to replace the ~~auditor~~ **accountant** with another that is ~~sufficiently independent of~~ **accountant whose relationship with the insurer is qualified within the meaning of this chapter.**

(l) An audit committee may delegate to one (1) or more designated members of the audit committee the authority to grant a preapproval required under subsection (j). The decisions of a member to whom this authority is delegated must be presented to the full audit committee at each scheduled meeting of the audit committee.

(m) An insurer that desires relief from the requirement of subsection (g)(5) shall, with the insurer's annual statement filing, file an application for relief from subsection (g)(5) with the:

(1) states in which the insurer is authorized to do business; and

(2) National Association of Insurance Commissioners.

If a nondomestic state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners.

SECTION 22. IC 27-1-3.5-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9.5. (a) An audit required under section 6 of this chapter must be conducted in accordance with generally accepted auditing standards.

(b) In accordance with AU Section 319 of the professional standards of the American Institute of Certified Public Accountants, an accountant conducting an audit under this chapter shall:

(1) obtain a sufficient understanding of internal control to plan the audit;

(2) for an insurer required to file a report of internal control over financial reporting under this chapter, consider the most recently available financial report under Statement on Auditing Standards No. 102 of the American Institute of Certified Public Accountants, or its replacement, in planning and performing the audit of the statutory financial statements; and

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(3) if considered necessary by the accountant, consider the procedures in the National Association of Insurance Commissioners Financial Condition Examiners Handbook.

SECTION 23. IC 27-1-3.5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. ~~A domestic An~~ insurer may apply in writing to the commissioner for approval to ~~satisfy the requirements of this chapter by filing file~~ audited consolidated or combined financial statements instead of separate annual audited financial statements if the insurer is part of a group of insurance companies that utilizes a pooling or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of the insurer's direct and assumed business to the pool. If ~~a domestic an~~ insurer whose application is approved elects to file a consolidated return, the insurer shall file, with its financial statements, a columnar consolidating or combining ~~schedule~~, **worksheet**, which must meet the following requirements:

(1) Amounts shown on the consolidated or combined **annual** audited financial report shall be shown on the ~~schedule~~, **worksheet**.

(2) Amounts for each insurer subject to this section shall be stated separately.

(3) Noninsurance operations ~~shall may~~ be shown on the ~~schedule worksheet~~ on a **combined or** an individual basis.

(4) Explanations of consolidating and eliminating entries shall be included.

(5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the ~~schedule worksheet~~ and comparable amounts shown on the annual statements of the insurers.

SECTION 24. IC 27-1-3.5-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. (a) ~~A domestic An~~ insurer required to file **an** annual audited financial ~~reports report~~ under this chapter shall require ~~its independent auditor the insurer's accountant~~ to report in writing to the board of directors or the ~~board of director's~~ audit committee, not more than five (5) business days after making ~~a the~~ determination, the ~~independent auditor's accountant's~~ determination that:

(1) the ~~domestic~~ insurer has materially misstated to the commissioner the financial condition of the insurer as of the date of the balance sheet being ~~examined audited~~ by the ~~independent auditor; accountant; or~~

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(2) the ~~domestic~~ insurer does not meet the minimum capital and surplus requirements of Indiana as of the date of the balance sheet being ~~examined audited~~ by the ~~independent auditor~~; **accountant**.

The ~~domestic~~ insurer ~~who that~~ has received a report under this section shall forward a copy of the report to the commissioner within five (5) business days after receipt of the report and shall provide the ~~independent~~ accountant making the report with evidence of the report being furnished to the commissioner. An ~~independent auditor who~~ **accountant that** does not receive the evidence that the report was filed with the commissioner within the required five (5) business days shall furnish the commissioner a copy of the report within the next five (5) business days. An ~~independent auditor may~~ **accountant is not be** liable to any person for a statement made in connection with this subsection, if the statement is made in good faith compliance with this subsection.

(b) If the ~~independent auditor~~ **accountant** of a ~~domestic an~~ insurer, after the filing of the insurer's **annual** audited financial report under this chapter, becomes aware of facts that, if the ~~independent auditor~~ **accountant** had been aware of the facts when writing ~~its the~~ **accountant's** report, might have affected the ~~independent auditor's~~ **accountant's** report that was included in the insurer's **annual** audited financial report, the ~~independent auditor~~ **accountant** shall take such action as is prescribed in the **Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants**.

SECTION 25. IC 27-1-3.5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12. (a) ~~A domestic An~~ insurer required by this chapter to file an **annual** audited financial report with the commissioner shall also furnish the commissioner with:

(1) a written ~~report (or a letter on reportable conditions)~~ describing the significant deficiencies **communication regarding any unremediated material weakness (as defined in Statement on Auditing Standard No. 60 of the American Institute of Certified Public Accountants, or its replacement)** in the insurer's internal control ~~structure; if internal control deficiencies were over financial reporting as of the December 31 immediately preceding the filing~~ noted by the ~~domestic insurer's independent auditor in connection with its~~ **accountant during the audit; and**

(2) a written ~~discussion~~ **description** of any remedial action taken or proposed ~~in connection with to correct any unremediated material weakness communicated in the written report; and~~

(3) if no material weakness is noted by the **accountant during**

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1 **the audit, a written communication noting that fact.**

2 (b) The written ~~report~~ **communication** and written ~~discussion~~
3 **description** required under subsection (a) must be filed not later than
4 sixty (60) days after the filing of the annual audited financial
5 ~~statements report.~~

6 SECTION 26. IC 27-1-3.5-12.5 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12.5. ~~The independent~~
8 **auditor An insurer's accountant** shall furnish the ~~domestic~~ insurer, in
9 connection with and for inclusion in the filing of the annual audited
10 financial report, a letter stating the following:

11 (1) That the ~~independent auditor~~ **accountant** is independent with
12 respect to the insurer and conforms to the standards of the
13 ~~independent auditor's accountant's~~ profession as contained in the
14 Code of Professional Ethics and Pronouncements of the American
15 Institute of Certified Public Accountants and the rules of
16 Professional Conduct of the Indiana State Board of Accountancy.

17 (2) The:

18 (A) general background and experience; and

19 (B) experience in audits of insurers;

20 of the staff assigned to the audit. The letter must also state
21 whether each member of the staff is ~~a certified public an~~
22 accountant. This subdivision does not prohibit the ~~independent~~
23 ~~auditor from using~~ **accountant's use of** the staff ~~as~~ considered
24 appropriate where such use is consistent with the standards
25 prescribed by generally accepted auditing standards.

26 (3) That the ~~independent auditor~~ **accountant** understands that the:

27 **(A) annual audited financial report and the accountant's**
28 **opinion on the annual audited financial report will be filed**
29 **with the commissioner; and**

30 **(B) commissioner** will be relying on the ~~independent auditor's~~
31 ~~annual audited financial report and the independent auditor's~~
32 ~~opinion in the report for filed report and opinion in the~~
33 monitoring and regulation of the financial ~~positions~~ **position**
34 of the ~~insurers.~~ **insurer.**

35 (4) That the ~~independent auditor~~ **accountant** consents to the
36 requirements of section 13 of this chapter and **consents and**
37 agrees to make available for review by the commissioner, the
38 commissioner's designee, or the commissioner's appointed agent,
39 any of the ~~independent auditor's accountant's~~ work papers. ~~and~~
40 ~~significant communications.~~

41 (5) That the ~~independent auditor~~ **accountant** is properly licensed
42 by an appropriate state licensing authority and is a member in

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good standing in the American Institute of Certified Public Accountants.

(6) That the ~~independent auditor~~ **accountant** is in compliance with the requirements of section 9 of this chapter.

SECTION 27. IC 27-1-3.5-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13. (a) ~~A domestic An~~ insurer required to file an **annual** audited financial report under this chapter shall require ~~its independent auditor~~ **the insurer's accountant** to make available for review by department examiners:

(1) all work papers prepared in the conduct of the ~~independent auditor's examination;~~ **accountant's audit;** and

(2) any ~~record of significant~~ communications, related to the audit, between the ~~independent auditor~~ **accountant** and the insurer; ~~that took place at (A) the offices of the insurer, (B) the department, (C) the offices of the independent auditor;~~ or ~~(D)~~ any other reasonable place designated by the commissioner.

(b) ~~The An~~ insurer **described in subsection (a)** shall require the ~~independent auditor~~ **accountant** to retain the audit work papers and communications until the department has filed a report on the examination covering the period of the audit but not later than seven (7) years after the date of the audit report.

~~(b) (c)~~ Department examiners, in conducting a review ~~of an independent auditor's work papers;~~ **under this section,** may make and retain ~~copies~~ **photocopies of the pertinent audit** work papers. ~~and communications: A review of an independent auditor's work papers and communications shall be under this section is~~ considered an investigation, and all work papers and communications obtained ~~or copied~~ during the course of ~~that the~~ investigation are confidential under IC 27-1-3.1-15.

SECTION 28. IC 27-1-3.5-13.8 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13.8. (a) **An insurer that is required to file an annual audited financial report under this chapter and has annual direct written and assumed premiums (excluding premiums reinsured with the Federal Crop Insurance Corporation and National Flood Insurance Program) equal to at least five hundred million dollars (\$500,000,000) shall:**

(1) **prepare the insurer's report of internal controls over financial reporting as of the December 31 immediately preceding the report; and**

(2) **file the report prepared under subdivision (1) with the commissioner, along with the communication required under**

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section 12 of this chapter.

(b) The commissioner may require an insurer that has any amount of annual direct written and assumed premiums to file the insurer's report of internal control over financial reporting if the insurer:

- (1) meets one (1) or more of the standards of an insurer considered to be in hazardous financial condition under 760 IAC 1-53 (as in effect on January 1, 2009); or
- (2) is in an RBC level event under IC 27-1-36.

(c) An insurer that:

(1) is subject to subsection (a) or (b);

(2) is:

(A) directly subject to Section 404;

(B) part of a holding company system whose parent is directly subject to Section 404;

(C) not directly subject to Section 404 and is a SOX compliant entity; or

(D) a member of a holding company system with a parent company that:

(i) is not directly subject to Section 404; and

(ii) is a SOX compliant entity; and

(3) includes a description of all of the insurer's internal controls over financial reporting that have a material impact on the preparation of the parts of the insurer's audited statutory financial statements described in section 7(b)(2) through 7(b)(6) and section 7(c) and 7(d) of this chapter in the insurer's or parent's Section 404 report;

may satisfy the requirement of subsection (a) or (b) by filing the insurer's or parent's Section 404 report and an affirmation from the insurer's management personnel that the description described in subdivision (3) is included with the Section 404 report.

(d) If an insurer has internal controls over financial reporting that have a material impact on the preparation of the insurer's audited statutory financial statements and a description of the internal controls over financial reporting is not included in the Section 404 report that is filed by the insurer, the insurer may file:

(1) the insurer's report of internal control over financial reporting as described in subsection (a); or

(2) a Section 404 report and the insurer's report of internal control over financial reporting as described in subsection (a);

for those internal controls over financial reporting.

(e) An insurer's report of internal control over financial

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reporting must include the following assertions:

(1) A statement that management personnel are responsible for establishing and maintaining adequate internal control over financial reporting.

(2) A statement that management personnel have established internal control over financial reporting and:

(A) an assertion concerning whether:

(i) after diligent inquiry by; and

(ii) to the best of the knowledge and belief of;

the management personnel, the insurer's internal control over financial reporting is effective to provide reasonable assurance that the financial statements are reliable and prepared in accordance with statutory accounting principles; or

(B) a disclosure of any unremediated material weakness:

(i) in the insurer's internal control over financial reporting; and

(ii) identified by management personnel as of the December 31 immediately preceding the date of the report.

(3) A statement that briefly describes the approach or process by which management personnel evaluate the effectiveness of the insurer's internal control over financial reporting.

(4) A statement that briefly describes the scope of work that is included in the report and whether any of the insurer's internal controls over financial reporting are excluded from the report.

(5) A statement regarding inherent limitations of the insurer's internal control over financial reporting system.

(6) Signatures of the chief executive officer and the chief financial officer or equivalent officers.

(f) An insurer's management personnel:

(1) shall:

(A) document; and

(B) make available upon a financial condition examination; the basis for the assertions made under subsection (e);

(2) may partially base the assertions made under subsection (e) on review, monitoring, and testing of the insurer's internal control over financial reporting that is undertaken in the normal course of the management activities; and

(3) shall determine the:

(A) nature of the insurer's internal control over financial

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1 reporting system; and
 2 (B) nature and extent of documentation;
 3 that are used to support the assertions made under subsection
 4 (e) in a cost effective manner.

5 (g) A report of an insurer's internal control over financial
 6 reporting and supporting documentation provided during a
 7 financial condition examination is confidential.

8 SECTION 29. IC 27-1-3.5-14 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) In response to
 10 a written application from a ~~domestic~~ an insurer, the commissioner
 11 may grant an exemption from compliance with this chapter if the
 12 commissioner finds, upon review of the application, that compliance
 13 with this chapter would constitute a financial or an organizational
 14 hardship upon the ~~domestic~~ insurer. An exemption may be granted at
 15 any time for a specified period.

16 (b) Within ten (10) days after the denial of a ~~domestic~~ an insurer's
 17 written request for an exemption from this chapter, the insurer may, in
 18 writing, request a hearing on its application for an exemption. The
 19 hearing shall be held under IC 4-21.5.

20 SECTION 30. IC 27-1-3.5-16 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) A domestic
 22 insurer that fails to file an audited annual financial report before July
 23 1 or any other deadline established by the commissioner for the insurer
 24 under this chapter without having obtained an extension is subject to
 25 a civil penalty of fifty dollars (\$50) per day until the report is received
 26 by the commissioner.

27 (b) A domestic insurer that, on July 1, 2009, has a qualified
 28 accountant on retainer shall comply with IC 27-1-3.5, as amended
 29 by amendments effective on July 1, 2009, for the year ending
 30 December 31, 2009, and each subsequent year unless otherwise
 31 specified by the commissioner.

32 (c) A domestic insurer that, on July 1, 2009, does not have a
 33 qualified accountant on retainer shall comply with this chapter, as
 34 amended by amendments effective on July 1, 2009, according to the
 35 following schedule, unless otherwise specified by the commissioner:

36 (1) For the year ending December 31, 2010, the domestic
 37 insurer shall file with the commissioner an annual audited
 38 financial report as required by amendments effective on July
 39 1, 2009.

40 (2) For the year ending December 31, 2011, and each
 41 subsequent year, the insurer shall be in full compliance with
 42 this chapter, as amended effective on July 1, 2009.

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(d) A foreign or alien insurer shall comply with this chapter, as amended effective on July 1, 2009, for the year ending December 31, 2010, and each year thereafter, unless otherwise specified by the commissioner.

(e) The requirements of section 9(e) of this chapter are in effect for an annual audited financial report for the year ending December 31, 2010, and each subsequent year.

(f) The requirements of section 7.2 of this chapter, as amended effective on July 1, 2009, apply beginning for the year ending December 31, 2009. However, an insurer or insurer group that, on December 31, 2009, is described in:

(1) section 7.2(h)(1) of this chapter and in a subsequent calendar year is described in section 7.2(h)(2) or 7.2(h)(3) of this chapter; or

(2) section 7.2(h)(2) of this chapter and in a subsequent calendar year is described in section 7.2(h)(3) of this chapter; due to a change in premium or business combination has one (1) calendar year following the year during which the change occurs to comply with the requirements specified in section 7.2(h) of this chapter for percentage of independent members of the insurer's or insurer group's audit committee.

(g) Except as provided in subsection (f), section 13.8 of this chapter applies beginning for the year ending December 31, 2010. However, an insurer or insurer group that, on December 31, 2010, is not subject to section 13.8 of this chapter and in a subsequent calendar year becomes subject to section 13.8 of this chapter due to a change in premium or business combination shall comply with section 13.8 of this chapter beginning two (2) calendar years following the calendar year during which the change occurs.

SECTION 31. IC 27-1-3.5-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. (a) In the case of a British or Canadian insurer, the annual audited financial report refers to the annual statement of total business on the form filed by the company with its domiciliary supervision authority audited by an ~~independent auditor~~ **accountant**.

(b) For a British or Canadian insurer, the letter required under section 8 of this chapter shall state that the accountant is aware of the requirement relating to the annual audited ~~statement~~ **financial report** filed with the commissioner under section 6 of this chapter and shall affirm that the opinion expressed is in conformity with those requirements.

SECTION 32. IC 27-1-9-12 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12. (a) In case of a merger or consolidation between a domestic and a foreign company, the articles of merger or consolidation shall be regarded as executed by the proper officers of said foreign company when such officers are duly authorized to execute same through such action on the part of the directors, shareholders, members, or policyholders of said foreign company as may be required by the laws of the state where the same is incorporated; and upon execution, said articles of merger or consolidation shall be submitted to the commissioner of insurance or other officer at the head of the insurance department of the state where such foreign company is incorporated. No such merger or consolidation shall take effect until it shall have been approved by the insurance official of the state where said foreign company is incorporated nor until a certificate of his approval has been filed in the office of the department of insurance of the state of Indiana. Such submission to and approval by the proper official of such other state shall not be required unless the same are required by the laws of such foreign state. The domestic company involved in such merger or consolidation shall not through anything contained in this section be relieved of any of the procedural requirements enumerated in the preceding sections of this article.

(b) No merger or consolidation between a domestic and a foreign company shall take effect, unless and until the surviving or new company, if such is a foreign company, ~~shall file with the department a power of attorney appointing the commissioner and his successors in office; the attorney for service of said foreign company; upon whom all lawful process against said company may be served. Said power of attorney shall be irrevocable so long as said foreign company has outstanding in this state any contract of insurance; or other obligation whatsoever; and shall by its terms so provide. Service upon the commissioner shall be deemed sufficient service upon the company.~~ **complies with IC 27-1-17-4(7).**

SECTION 33. IC 27-1-17-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. No foreign or alien insurance company shall be admitted to do business in this state having a name which, at the date of such admission, could not be taken by a domestic corporation under the provisions of IC 27-1-6-3, except that the name of a foreign or alien insurance company need not include the word "company", "corporation", "incorporated", or "mutual", or one (1) of the abbreviations thereof, nor the word "insurance" or the word "assurance" provided the name of such company is authorized by the laws of the state or territory of its organization or domicile and

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provided such name does not negate the characteristic of such company as an insurance company. ~~No such foreign or alien insurance company after it has been admitted shall, by amendment to its charter, assume any name which, at the date of the filing of such amendment as provided in this chapter, could not be taken by a domestic corporation under the provisions of IC 27-1-6-3.~~

SECTION 34. IC 27-1-17-4, AS AMENDED BY P.L.193-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. Whenever a foreign or an alien insurance company desires to be admitted to do an insurance business in this state, it shall execute in the English language and present the following to the department, at its office, accompanied by the fees prescribed by law:

- (1) A copy of its articles of incorporation or association, with all amendments thereto, duly authenticated by the proper officer of the state, country, province, or government wherein it is incorporated or organized, or the state in which it is domiciled in the United States.
- (2) An application for admission, executed in the manner provided in this chapter, setting forth:
 - (A) the name of such company;
 - (B) the location of its principal office or place of business without this state;
 - (C) the names of the states in which it has been admitted or qualified to do business;
 - (D) the character of insurance business under its articles of incorporation or association which it intends to transact in this state, which must conform to the class or classes set forth in the provisions of IC 27-1-5-1;
 - (E) the total authorized capital stock of the company and the amount thereof issued and outstanding, and the surplus required of such company by the laws of the state, country, province, or government under which it is organized, or the state in which it is domiciled in the United States, if a stock company, which shall equal at least the requirements set forth in section 5(a) of this chapter;
 - (F) the total amount of assets and the surplus of assets over all its liabilities, if other than a stock company, which shall equal at least the requirements set forth in section 5(b) of this chapter;
 - (G) if an alien company, the surplus of assets invested according to the laws of the state in the United States where it

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has its deposit, which shall equal at least the requirements set forth in section 5(c) of this chapter; and

(H) such further and additional information as the department may from time to time require.

The application shall be signed, ~~in duplicate~~ in the form prescribed by the department, by the president or a vice president and the secretary or an assistant secretary of the corporation, and verified under oath by the officers signing the same.

(3) A statement of its financial condition and business, in the form prescribed by law for annual statements, signed and sworn to by the president or secretary or other principal officers of the company; provided, however, that an alien company shall also furnish a separate statement comprising only its condition and business in the United States, which shall be signed and sworn to by its United States manager.

(4) A copy of the last report of examination certified to by the insurance commissioner or other proper supervisory official of the state in which such company is domiciled; provided, however, that the commissioner may cause an examination to be made of the condition and affairs of such company before authority to transact business in this state is given.

(5) A certificate from the proper official of the state, country, province, or government wherein it is incorporated or organized, or the state in which it is domiciled in the United States, that it is duly organized or incorporated under those laws and authorized to make the kind or kinds of insurance which it proposes to make in this state.

(6) A copy of its bylaws or regulations, if any, certified to by the secretary or similar officer of the insurance company.

(7) A duly executed power of attorney in a form prescribed by the department which constitutes and appoints an individual or a corporate resident of Indiana, or an authorized Indiana insurer, as the insurance company's agent, its true and lawful attorney upon whom, except as provided in section 4.2 of this chapter, all lawful processes in any action in law or in equity against it shall be served. Such power of attorney shall contain an agreement by the insurance company that any lawful process against it which may be served upon the agent as its attorney shall be of the same force and validity as if served upon the insurance company and that such power of attorney shall continue in force and be irrevocable so long as any liability of the insurance company remains outstanding in this state. Such power of attorney shall be executed

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by the president and secretary of the insurance company or other duly authorized officers under its seal and shall be accompanied by a certified copy of the resolution of the board of directors of the company making said appointment and authorizing the execution of said power of attorney. Service of any lawful process shall be by delivering to and leaving with the agent two (2) copies of such process, with copy of the pertinent complaint attached. The agent shall forthwith transmit to the defendant company at its last known principal place of business by registered or certified mail, return receipt requested, one (1) of the copies of such process, with complaint attached, the other copy to be retained in a record which shall show all process served upon and transmitted by him. Such service shall be sufficient provided the returned receipt or, if the defendant company shall refuse to accept such mailing, the registered mail together with an affidavit of plaintiff or his attorney stating that service was made upon the agent and forwarded as above set forth but that such mail was returned by the post office department is filed with the court. The agent shall make information and receipts available to plaintiff, defendant, or their attorneys. No plaintiff or complainant shall be entitled to a judgment by default based on service authorized by this section until the expiration of at least thirty (30) days from the date on which either the post office receipt or the unclaimed mail together with affidavit is filed with the court. Nothing in this section shall limit or abridge the right to serve any process, notice, or demand upon any company in any other manner permitted by law.

(8) Proof which satisfies the department that it has complied with the financial requirements imposed in this chapter upon foreign and alien insurance companies which transact business in this state and that it is entitled to public confidence and that its admission to transact business in this state will not be prejudicial to public interest.

SECTION 35. IC 27-1-18-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) Any foreign or alien corporation admitted to do business in this state may alter or enlarge the character of the business which it is authorized to transact in this state under its articles of incorporation or association, and any amendments thereof filed with the department as provided in section 3 of this chapter, by procuring an amended certificate of authority from the department in the manner provided in subsection (b).

(b) Whenever a foreign or alien corporation desires to procure such amended certificate, it shall present to the department at its office,

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1 accompanied by the fees prescribed by law, an application for an
 2 amended certificate of authority, setting forth the change desired in the
 3 kind or kinds of insurance business under its articles of incorporation
 4 or association which it intends to thereafter carry on in this state; the
 5 application shall be filed ~~in duplicate~~ in the form prescribed by the
 6 department by the president or a vice president and the secretary or an
 7 assistant secretary of the corporation, and verified by the oaths of the
 8 officers signing the same.

9 (c) Upon the presentation of such application, accompanied by the
 10 corporation's certificate of authority, the department, if it ~~find~~ **finds** that
 11 it conforms to law and that the foreign or alien company has fulfilled
 12 the requirements set forth in subsection (b) and in section 3 of this
 13 chapter, may endorse its approval upon ~~each of the duplicate copies of~~
 14 the application, and, in case of the approval of such application and
 15 when all fees required by law shall have been paid, shall file one (1)
 16 copy of the application in its office, cancel the certificate of authority
 17 presented with the application, and issue to the corporation a new
 18 certificate of authority, which certificate shall set forth the kind or
 19 kinds of business that the corporation is authorized thereafter to
 20 transact in this state, which shall be accompanied by one (1) copy of
 21 the application bearing the endorsement of the approval of the
 22 department.

23 (d) Upon the issuance of the new certificate of authority by the
 24 department, the corporation therein named shall have authority
 25 thereafter to transact in this state the kind or kinds of insurance
 26 business set forth in such certificate, subject to the terms and
 27 conditions prescribed in this article.

28 SECTION 36. IC 27-1-18-5 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. At the time of filing
 30 its annual statement, an alien or foreign company shall submit, on a
 31 form prescribed by the department, a condensed statement of its assets
 32 and liabilities as of December 31 of the preceding year. If the
 33 department, on examination of such statement, determines from
 34 information available to it that it is true and correct, it shall cause such
 35 statement to be ~~published in a newspaper in this state selected by the~~
 36 ~~department: made public.~~ In the event the department determines that
 37 the statement submitted by a company is inaccurate or incorrect, it
 38 shall, after giving the company notice of the proposed changes and an
 39 opportunity to be heard, certify the corrected statement and proceed
 40 ~~with its publication as above provided: The company shall bear the~~
 41 ~~expenses of the publication; but in no event shall an amount exceeding~~
 42 ~~forty dollars (\$40) be charged for such publication: Any cost of~~

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publication that exceeds forty dollars (\$40) must be borne by the newspaper publishing the statement. to make the statement public.

SECTION 37. IC 27-1-20-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) As used in this section:

"Securities" means instruments as defined in IC 26-1-8.1-102.

"Broker dealer" means an entity that:

(1) is registered with and subject to the jurisdiction of the Securities and Exchange Commission;

(2) maintains membership in the Securities Investor Protection Corporation; and

(3) has a tangible net worth of at least two hundred fifty million dollars (\$250,000,000).

"Clearing corporation" means a corporation as defined in IC 26-1-8.1-102 except that with respect to securities issued by institutions organized or existing under the laws of any foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein. "Clearing corporation" may include a corporation organized or existing under the laws of any foreign country and which is legally qualified under such laws to effect transactions in securities by computerized book entry.

"Direct participant" means a bank, trust company, or safety deposit company approved by the commissioner which maintains an account in its name in a clearing corporation and through which an insurance company participates in a clearing corporation.

"Federal Reserve book-entry system" means the computerized systems sponsored by the United States Department of the Treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and such agencies and instrumentalities, respectively, in Federal Reserve Banks through banks which are members of the Federal Reserve System, or which otherwise have access to such computerized systems.

"Member bank" means a national bank, state bank, or trust company which is a member of the Federal Reserve System and through which an insurance company participates in the Federal Reserve book-entry system.

"Securities" means instruments (as defined in IC 26-1-8.1-102).

(b) Notwithstanding any other provision of law, a domestic insurance company may deposit or arrange for the safekeeping of securities held in or purchased for its general account and its separate accounts in a clearing corporation or the Federal Reserve book-entry system. When securities are deposited with a clearing corporation,

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certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other securities deposited with such clearing corporation by any person, regardless of the ownership of such securities, and certificates representing securities of small denominations may be merged into one (1) or more certificates of larger denominations. The records of any member bank **or broker dealer** through which an insurance company holds securities in the Federal Reserve book-entry system, and the records of any custodian through which an insurance company holds securities in a clearing corporation, shall at all times show that such securities are held for such insurance company and for which accounts thereof. Ownership of, and other interests in, such securities may be transferred by bookkeeping entry on the books of such clearing corporation or in the Federal Reserve book-entry system without, in either case, physical delivery of certificates representing such securities.

(c) Any Indiana law requiring an insurance company operating under the laws of Indiana to deposit assets with the department shall be deemed complied with if such deposit is made pursuant to a written agreement between the insurance company and any bank, trust company or a safety deposit company and approved by the commissioner which limits withdrawals to those sanctioned and approved by the department. Deposits so made shall be credited by the department as deposits in its possession on the basis of the insurance company's affidavit describing such deposits as to amount and nature.

(d) Notwithstanding any other provisions of law, securities eligible for deposit under the insurance law of this state relating to deposit of securities by an insurance company as a condition of commencing or continuing to do an insurance business in this state may be deposited with a clearing corporation or held in the Federal Reserve book-entry system. Securities deposited with a clearing corporation or held in the Federal Reserve book-entry system and used to meet the deposit requirements under the insurance laws of this state shall be under the control of the commissioner and shall not be withdrawn by the insurance company without the approval of the commissioner. Any insurance company holding such securities in such manner shall provide to the commissioner evidence issued by its custodian or a member bank through which such insurance company has deposited securities with a clearing corporation or held in the Federal Reserve book-entry system, respectively, in order to establish that the securities are actually recorded in an account in the name of the custodian or other direct participant or member bank and evidence that the records

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of the custodian, other participant, or member bank reflect that such securities are held subject to the order of the commissioner.

(e) The commissioner of insurance is authorized to promulgate rules and regulations governing the deposit by insurance companies of securities with clearing corporations and in the Federal Reserve book-entry system.

SECTION 38. IC 27-1-23-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) Material transactions within an insurance holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

(1) The terms shall be fair and reasonable.

(2) The charges or fees for services performed shall be reasonable.

(3) The expenses incurred for any payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

(4) The books, accounts, and records of each party as to all transactions described in this subsection shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions, including accounting information necessary to support the reasonableness of the charges or fees to the respective parties.

(5) The insurer's surplus as regards policyholders following any transactions with affiliates or shareholder dividend shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) The following transactions involving a domestic insurer and any person in its insurance holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into such transaction at least thirty (30) days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period:

(1) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments, provided those transactions are equal to or exceed:

(A) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; and

(B) with respect to life insurers, three percent (3%) of the insurer's admitted assets;

each as of December 31 next preceding.

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(2) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes those loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, provided those transactions are equal to or exceed:

(A) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; and

(B) with respect to life insurers, three percent (3%) of the insurer's admitted assets;

each as of December 31 next preceding.

(3) Reinsurance agreements or modifications thereto in which the amount of cash or invested assets transferred by the insurer equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of December 31 next preceding, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one (1) or more affiliates of the insurer.

(4) Management agreements, service contracts, ~~and~~ cost-sharing arrangements, **lease agreements, and tax allocation agreements.**

(5) Material transactions, specified by rule, that the commissioner determines may adversely affect the interests of the insurer's policyholders.

This subsection does not authorize or permit any transactions that, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law.

(c) A domestic insurer may not enter into transactions that are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise.

(d) The commissioner, in reviewing transactions pursuant to subsection (b), shall consider whether the transactions comply with the standards set forth in subsection (a) and whether the transactions may adversely affect the interests of policyholders.

(e) The commissioner shall be notified within thirty (30) days of any

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1 investment of the domestic insurer in any one (1) corporation if the
 2 total investment in that corporation by the insurance holding company
 3 system exceeds ten percent (10%) of the corporation's voting securities.

4 (f) For purposes of this chapter, in determining whether an insurer's
 5 surplus is reasonable in relation to the insurer's outstanding liabilities
 6 and adequate to its financial needs, the following factors, among others,
 7 shall be considered:

8 (1) The size of the insurer as measured by its assets, capital and
 9 surplus, reserves, premium writings, insurance in force and other
 10 appropriate criteria.

11 (2) The extent to which the insurer's business is diversified among
 12 the several lines of insurance.

13 (3) The number and size of risks insured in each line of business.

14 (4) The extent of the geographical dispersion of the insurer's
 15 insured risks.

16 (5) The nature and extent of the insurer's reinsurance program.

17 (6) The quality, diversification, and liquidity of the insurer's
 18 investment portfolio.

19 (7) The recent past and projected future trend in the size of the
 20 insurer's surplus as regards policyholders.

21 (8) The surplus as regards policyholders maintained by other
 22 comparable insurers in respect of the factors described in
 23 subdivisions (1) through (7).

24 (9) The adequacy of the insurer's reserves.

25 (10) The quality and liquidity of investments in subsidiaries,
 26 except that the commissioner may discount or treat any such
 27 investment in subsidiaries as a disallowed asset for purposes of
 28 determining the adequacy of surplus whenever in his judgment
 29 such investment so warrants.

30 (11) The quality of the earnings of the insurer and the extent to
 31 which the reported earnings of the insurer include extraordinary
 32 items.

33 (g) No domestic insurer subject to registration under section 3 of
 34 this chapter shall pay an extraordinary dividend or make any other
 35 extraordinary distribution to its security holders until:

36 (1) thirty (30) days after the commissioner has received notice of
 37 the declaration thereof and has not within such period
 38 disapproved such payment; or

39 (2) the commissioner shall have approved such payment within
 40 such thirty (30) day period.

41 (h) For purposes of subsection (g), an extraordinary dividend or
 42 distribution is any dividend or distribution of cash or other property

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whose fair market value, together with that of other dividends or distributions made within the twelve (12) consecutive months ending on the date on which the proposed dividend or distribution is scheduled to be made, exceeds the greater of:

- (1) ten percent (10%) of such insurer's surplus as regards policyholders as of the most recently preceding December 31; or
- (2) the net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life insurer, for the twelve (12) month period ending on the most recently preceding December 31.

(i) Notwithstanding any other provision of law, a domestic insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, but such a declaration shall confer no rights upon shareholders until:

- (1) the commissioner has approved the payment of such dividend or distribution; or
- (2) the commissioner has not disapproved the payment within the thirty (30) day period referred to in subsection (g).

SECTION 39. IC 27-1-25-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. As used in this chapter:

(a) "Administrator" ~~except as provided in section 7.5 of this chapter,~~ means a person who directly or indirectly and on behalf of an insurer underwrites, collects charges or premiums from, or adjusts or settles claims on residents of Indiana in connection with life, annuity, or health coverage offered or provided by an insurer. The term "administrator" does not include the following persons:

- (1) An employer or a wholly owned direct or indirect subsidiary of an employer acting on behalf of the employees of:
 - (A) the employer;
 - (B) the subsidiary; or
 - (C) an affiliated corporation of the employer.
- (2) A union acting for its members.
- (3) An insurer.
- (4) An insurance producer:
 - (A) that is licensed under IC 27-1-15.6;
 - (B) that has:
 - (i) a life; or
 - (ii) an accident and health or sickness; qualification under IC 27-1-15.6-7; and
 - (C) whose activities are limited exclusively to the sale of insurance.

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(5) A creditor acting for its debtors regarding insurance covering a debt between them.

(6) A trust established under 29 U.S.C. 186 and the trustees, agents, and employees acting pursuant to that trust.

(7) A trust that is exempt from taxation under Section 501(a) of the Internal Revenue Code and:

(A) the trustees and employees acting pursuant to that trust; or

(B) a custodian and the agents and employees of the custodian acting pursuant to a custodian account that meets the requirements of Section 401(f) of the Internal Revenue Code.

(8) A financial institution that is subject to supervision or examination by federal or state banking authorities to the extent that the financial institution collects and remits premiums to an insurance producer or an authorized insurer in connection with a loan payment.

(9) A credit card issuing company that:

(A) advances for; and

(B) collects from, when a credit card holder authorizes the collection;

credit card holders of the credit card issuing company, insurance premiums or charges.

(10) A person that adjusts or settles claims in the normal course of the person's practice or employment as an attorney at law and that does not collect charges or premiums in connection with life, annuity, or health coverage.

(11) A health maintenance organization that has a certificate of authority issued under IC 27-13.

(12) A limited service health maintenance organization that has a certificate of authority issued under IC 27-13.

(13) A mortgage lender to the extent that the mortgage lender collects and remits premiums to an insurance producer or an authorized insurer in connection with a loan payment.

(14) A person that:

(A) is licensed as a managing general agent as required under IC 27-1-33; and

(B) acts exclusively within the scope of activities provided for under the license referred to in clause (A).

(15) A person that:

(A) directly or indirectly underwrites, collects charges or premiums from, or adjusts or settles claims on residents of Indiana in connection with life, annuity, or health coverage provided by an insurer;

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- 1 (B) is affiliated with the insurer; and
 2 (C) performs the duties specified in clause (A) only according
 3 to a contract between the person and the insurer for the direct
 4 and assumed life, annuity, or health coverage provided by the
 5 insurer.
- 6 (b) "Affiliate" means an entity or a person that:
 7 (1) directly or indirectly through an intermediary controls or is
 8 controlled by; or
 9 (2) is under common control with;
 10 a specified entity or person.
- 11 (c) "Church plan" has the meaning set forth in IC 27-8-10-1.
 12 (d) "Commissioner" refers to the insurance commissioner appointed
 13 under IC 27-1-1-2.
- 14 (e) "Control" means the direct or indirect possession of the power
 15 to direct or cause the direction of the management and policies of a
 16 person, whether:
 17 (1) through ownership of voting securities;
 18 (2) by contract other than a commercial contract for goods or
 19 nonmanagement services; or
 20 (3) otherwise;
 21 unless the power is the result of an official position with the person or
 22 a corporate office held by the person. Control is presumed to exist if a
 23 person directly or indirectly owns, controls, holds with the power to
 24 vote, or holds proxies representing not less than ten percent (10%) of
 25 the voting securities of another person.
- 26 (f) "Covered individual" means an individual who is covered under
 27 a benefit program provided by an insurer.
- 28 (g) "Financial institution" means a bank, savings association, credit
 29 union, or any other institution regulated under IC 28 or federal law.
- 30 (h) "GAAP" refers to consistently applied United States generally
 31 accepted accounting principles.
- 32 (i) "Governmental plan" has the meaning set forth in IC 27-8-10-1.
- 33 (j) "Home state" means the District of Columbia or any state or
 34 territory of the United States in which an administrator is incorporated
 35 or maintains the administrator's principal place of business. If the place
 36 in which the administrator is incorporated or maintains the
 37 administrator's principal place of business is not governed by a law that
 38 is substantially similar to this chapter, the administrator's home state is
 39 another state:
 40 (1) in which the administrator conducts the business of the
 41 administrator; and
 42 (2) that the administrator declares is the administrator's home

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- 1 state.
- 2 (k) "Insurance producer" has the meaning set forth in
- 3 IC 27-1-15.6-2.
- 4 (l) "Insurer" means:
- 5 (1) a person who obtains a certificate of authority under:
- 6 (A) IC 27-1-3-20;
- 7 (B) IC 27-13-3; or
- 8 (C) IC 27-13-34; or
- 9 (2) an employer that provides life, health, or annuity coverage in
- 10 Indiana under a governmental plan or a church plan.
- 11 (m) "NAIC" refers to the National Association of Insurance
- 12 Commissioners.
- 13 (n) "Negotiate" has the meaning set forth in IC 27-1-15.6-2.
- 14 (o) "Nonresident administrator" means a person that applies for or
- 15 holds a license under section 12.2 of this chapter.
- 16 (p) "Person" has the meaning set forth in IC 27-1-15.6-2.
- 17 (q) "Sell" has the meaning set forth in IC 27-1-15.6-2.
- 18 (r) "Solicit" has the meaning set forth in IC 27-1-15.6-2.
- 19 (s) "Underwrite" refers to the:
- 20 (1) acceptance of a group application or an individual application
- 21 for coverage of an individual in accordance with the written rules
- 22 of the insurer; or
- 23 (2) planning and coordination of a benefit program provided by
- 24 an insurer.
- 25 (t) "Uniform application" means the current version of the NAIC
- 26 uniform application for third party administrators.
- 27 SECTION 40. IC 27-1-25-11.1 IS AMENDED TO READ AS
- 28 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11.1. (a) If the home
- 29 state of a person is Indiana, the person shall:
- 30 (1) apply to act as an administrator in Indiana upon the uniform
- 31 application; ~~and~~
- 32 **(2) pay an application fee of one hundred dollars (\$100); and**
- 33 ~~(2) (3)~~ **(3)** receive a license from the commissioner;
- 34 before performing the function of an administrator in Indiana.
- 35 (b) The uniform application must include or be accompanied by the
- 36 following:
- 37 (1) Basic organizational documents of the applicant, including:
- 38 (A) articles of incorporation;
- 39 (B) articles of association;
- 40 (C) partnership agreement;
- 41 (D) trade name certificate;
- 42 (E) trust agreement;

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- 1 (F) shareholder agreement;
 2 (G) other applicable documents; and
 3 (H) amendments to the documents specified in clauses (A)
 4 through (G).
 5 (2) Bylaws, rules, regulations, or other documents that regulate
 6 the internal affairs of the applicant.
 7 (3) The NAIC biographical affidavits for individuals who are
 8 responsible for the conduct of affairs of the applicant, including:
 9 (A) members of the applicant's:
 10 (i) board of directors;
 11 (ii) board of trustees;
 12 (iii) executive committee; or
 13 (iv) other governing board or committee;
 14 (B) principal officers, if the applicant is a corporation;
 15 (C) partners or members, if the applicant is:
 16 (i) a partnership;
 17 (ii) an association; or
 18 (iii) a limited liability company;
 19 (D) shareholders or members that hold, directly or indirectly,
 20 at least ten percent (10%) of the:
 21 (i) voting stock;
 22 (ii) voting securities; or
 23 (iii) voting interest;
 24 of the applicant; and
 25 (E) any other person who exercises control or influence over
 26 the affairs of the applicant.
 27 (4) Financial information reflecting a positive net worth,
 28 including:
 29 (A) audited annual financial statements prepared by an
 30 independent certified public accountant for the two (2) most
 31 recent fiscal years; or
 32 (B) if the applicant has been in business for less than two (2)
 33 fiscal years, financial statements or reports that are:
 34 (i) prepared in accordance with GAAP; and
 35 (ii) certified by an officer of the applicant;
 36 for any completed fiscal years and for any month during the
 37 current fiscal year for which financial statements or reports
 38 have been completed.
 39 If an audited financial statement or report required under clause
 40 (A) or (B) is prepared on a consolidated basis, the statement or
 41 report must include a columnar consolidating or combining
 42 worksheet that includes the amounts shown on the consolidated

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audited financial statement or report, separately reported on the worksheet for each entity included on the statement or report, and an explanation of consolidating and eliminating entries.

(5) Information determined by the commissioner to be necessary for a review of the current financial condition of the applicant.

(6) A description of the business plan of the applicant, including:

(A) information on staffing levels and activities proposed in Indiana and nationwide; and

(B) details concerning the applicant's ability to provide a sufficient number of experienced and qualified personnel for:

(i) claims processing;

(ii) record keeping; and

(iii) underwriting.

(7) Any other information required by the commissioner.

(c) An administrator that applies for licensure under this section shall make copies of written agreements with insurers available for inspection by the commissioner.

(d) An administrator that applies for licensure under this section shall:

(1) produce the administrator's accounts, records, and files for examination; and

(2) make the administrator's officers available to provide information concerning the affairs of the administrator;

whenever reasonably required by the commissioner.

(e) The commissioner may refuse to issue a license under this section if the commissioner determines that:

(1) the administrator or an individual who is responsible for the conduct of the affairs of the administrator:

(A) is not:

(i) competent;

(ii) trustworthy;

(iii) financially responsible; or

(iv) of good personal and business reputation; or

(B) has had an:

(i) insurance certificate of authority or insurance license; or

(ii) administrator certificate of authority or administrator license;

denied or revoked for cause by any jurisdiction;

(2) the financial information provided under subsection (b)(4) does not reflect that the applicant has a positive net worth; or

(3) any of the grounds set forth in section 12.4 of this chapter exists with respect to the administrator.

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(f) An administrator that applies for a license under this section shall immediately notify the commissioner of a material change in:

- (1) the ownership or control of the administrator; or
- (2) another fact or circumstance that affects the administrator's qualification for a license.

The commissioner, upon receiving notice under this subsection, shall report the change to an electronic data base maintained by the NAIC or an affiliate or a subsidiary of the NAIC.

(g) An administrator that applies for a license under this section and will administer a governmental plan or a church plan shall obtain a bond as required under section 4(g) of this chapter.

(h) A license that is issued under this section is valid **for one (1) year after the date of issuance or until:**

- (1) the license is:
 - (A) surrendered; or
 - (B) suspended or revoked by the commissioner; or
- (2) the administrator:
 - (A) ceases to do business in Indiana; or
 - (B) is not in compliance with this chapter;

whichever occurs first.

(i) To renew a license that expires under subsection (h), an administrator shall pay a renewal fee of one hundred dollars (\$100).

SECTION 41. IC 27-1-25-12.2, AS AMENDED BY P.L.234-2007, SECTION 191, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12.2. (a) An administrator that:

- (1) performs the duties of an administrator in Indiana; and
- (2) does not hold a license issued under section 11.1 of this chapter;

shall obtain a nonresident administrator license under this section by filing a uniform application, **accompanied by an application fee of one hundred dollars (\$100),** with the commissioner.

(b) Unless the commissioner verifies the nonresident administrator's home state license status through an electronic data base maintained by the NAIC or by an affiliate or a subsidiary of the NAIC, a uniform application filed under subsection (a) must be accompanied by a letter of certification from the nonresident administrator's home state, verifying that the nonresident administrator holds a resident administrator license in the home state.

(c) A nonresident administrator is not eligible for a nonresident administrator license under this section unless the nonresident administrator is licensed as a resident administrator in a home state that

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has a law or regulation that is substantially similar to this chapter.

(d) Except as provided in subsections (b) and (h), the commissioner shall issue a nonresident administrator license to a nonresident administrator that makes a filing under subsections (a) and (b) upon receipt of the filing.

(e) Unless a nonresident administrator is notified by the commissioner that the commissioner is able to verify the nonresident administrator's home state licensure through an electronic data base described in subsection (b), the nonresident administrator shall:

(1) on September 15 of each year, file a statement with the commissioner affirming that the nonresident administrator maintains a current license in the nonresident administrator's home state; and

(2) pay a filing fee as required by the commissioner.

The commissioner shall collect a filing fee required under subdivision (2) and deposit the fee into the department of insurance fund established by IC 27-1-3-28.

(f) A nonresident administrator that applies for licensure under this section shall:

(1) produce the accounts of the nonresident administrator;

(2) produce the records and files of the nonresident administrator for examination; and

(3) make the officers of the nonresident administrator available to provide information with respect to the affairs of the nonresident administrator;

when reasonably required by the commissioner.

(g) A nonresident administrator is not required to hold a nonresident administrator license in Indiana if the nonresident administrator's function in Indiana is limited to the administration of life, health, or annuity coverage for a total of not more than one hundred (100) Indiana residents.

(h) The commissioner may refuse to issue or may delay the issuance of a nonresident administrator license if the commissioner determines that:

(1) due to events occurring; or

(2) based on information obtained;

after the nonresident administrator's home state's licensure of the nonresident administrator, the nonresident administrator is unable to comply with this chapter or grounds exist for the home state's revocation or suspension of the nonresident administrator's home state license.

(i) If the commissioner makes a determination described in

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subsection (h), the commissioner:

(1) shall provide written notice of the determination to the insurance regulator of the nonresident administrator's home state; and

(2) may delay the issuance of a nonresident administrator license to the nonresident administrator until the commissioner determines that the nonresident administrator is able to comply with this chapter and that grounds do not exist for the home state's revocation or suspension of the nonresident administrator's home state license.

SECTION 42. IC 27-1-25-12.3, AS AMENDED BY P.L.234-2007, SECTION 192, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12.3. (a) An administrator that is licensed under section 11.1 of this chapter shall, not later than July 1 of each year unless the commissioner grants an extension of time for good cause, file a report for the previous calendar year that complies with the following:

(1) The report must contain financial information reflecting a positive net worth prepared in accordance with section 11.1(b)(4) of this chapter.

(2) The report must be in the form and contain matters prescribed by the commissioner.

(3) The report must be verified by at least two (2) officers of the administrator.

(4) The report must include the complete names and addresses of insurers with which the administrator had a written agreement during the preceding fiscal year.

(5) The report must be accompanied by a filing fee ~~determined by the commissioner.~~ **of one hundred dollars (\$100).**

The commissioner shall collect a filing fee paid under subdivision (5) and deposit the fee into the department of insurance fund established by IC 27-1-3-28.

(b) The commissioner shall review a report filed under subsection (a) not later than September 1 of the year in which the report is filed. Upon completion of the review, the commissioner shall:

(1) issue a certification to the administrator:

(A) indicating that:

(i) the financial statement reflects a positive net worth; and

(ii) the administrator is currently licensed and in good standing; or

(B) noting deficiencies found in the report; or

(2) update an electronic data base that is maintained by the NAIC

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or by an affiliate or a subsidiary of the NAIC:

(A) indicating that the administrator is solvent and in compliance with this chapter; or

(B) noting deficiencies found in the report.

SECTION 43. IC 27-4-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) It is a Class A infraction for an insurer to transact insurance business in this state, as set forth in subsection (b), without a certificate of authority from the commissioner. However, this section does not apply to the following:

(1) The lawful transaction of surplus lines insurance.

(2) The lawful transaction of reinsurance by insurers.

(3) Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.

(4) Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses.

(5) Transactions in this state involving group life and group sickness and accident or blanket sickness and accident insurance or group annuities where the master policy of such groups was lawfully issued and delivered in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business, to a group organized for purposes other than the procurement of insurance, and where the policyholder is domiciled or otherwise has a bona fide situs.

(6) Transactions in this state relative to a policy issued or to be issued outside this state involving insurance on vessels, craft or hulls, cargos, marine builder's risk, marine protection and indemnity or other risk, including strikes and war risks commonly insured under ocean or wet marine forms of policy.

(7) Transactions in this state involving life insurance, health insurance, or annuities provided to religious or charitable institutions organized and operated without profit to any private shareholder or individual for the benefit of such institutions and individuals engaged in the service of such institutions.

(8) Transactions in this state involving contracts of insurance not readily obtainable in the ordinary insurance market and issued to one (1) or more industrial insureds. For purposes of this section, an "industrial insured" means an insured:

(A) who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance

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manager or buyer or the services of a regularly retained and continuously qualified insurance consultant;

(B) whose aggregate annual premium for insurance on all risks totals at least twenty-five thousand dollars (\$25,000); ~~and~~

(C) who has at least twenty-five (25) full-time employees;

(D) who, on or before February 1 (for the preceding six (6) month period ending December 31) and August 1 (for the preceding six (6) month period ending June 30) of each year, remit to the department an amount equal to two and one-half percent (2.5%) of all gross premiums upon all policies and contracts procured by the insured under this section, plus:

(i) ten percent (10%) of the amount due for the first month after the date specified in this clause during which the amount described in this clause is not remitted in compliance with this clause; and

(ii) an additional one percent (1%) of the amount due for each additional month during which the amount due under this clause is unpaid;

for deposit in the department of insurance fund established by IC 27-1-3-28; and

(E) who files with the department, with the amount remitted under clause (D), an affidavit specifying all transactions undertaken and policies and contracts procured during the preceding calendar year, including the following:

(i) The description and location of the insured property or risk and the name of the insured.

(ii) The gross premiums charged for the policy or contract.

(iii) The name and home office address of the insurer that issues the policy or contract and the kind of insurance effected.

(iv) A statement that the insured, after diligent effort, was unable to procure from any insurer authorized to transact the particular kind of insurance business in Indiana the full amount of insurance coverage required to protect the insured.

(9) Transactions in Indiana involving the rendering of any service by any ambulance service provider and all fees, costs, and membership payments charged for the service. To qualify under this subdivision, the ambulance service provider:

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(A) must have its ambulance service program approved by an ordinance of the legislative body of the county or city in which it operates; and

(B) may not offer any membership program that includes benefits exceeding one (1) year in duration.

(b) Any of the following acts in this state effected by mail or otherwise by or on behalf of an unauthorized insurer constitutes the transaction of an insurance business in this state. The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. Unless otherwise indicated, the term "insurer" as used in this section includes all persons engaged as principals in the business of insurance and also includes interinsurance exchanges and mutual benefit societies.

(1) The making of or proposing to make, as an insurer, an insurance contract.

(2) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.

(3) The taking or receiving of any application for insurance.

(4) The receiving or collection of any premium, commission, membership fees, assessments, dues, or other consideration for any insurance or any part thereof.

(5) The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state.

(6) Acting as an agent for or otherwise representing or aiding on behalf of another person or insurer in the solicitation, negotiation, procurement, or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or representing or assisting a person or an insurer in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state. This subdivision does not prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of the employer.

(c)(1) The failure of an insurer transacting insurance business in this state to obtain a certificate of authority does not impair the validity of any act or contract of such insurer and does not prevent such insurer

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from defending any action at law or suit in equity in any court of this state, but no insurer transacting insurance business in this state without a certificate of authority may maintain an action in any court of this state to enforce any right, claim, or demand arising out of the transaction of such business until such insurer obtains a certificate of authority.

(2) In the event of failure of any such unauthorized insurer to pay any claim or loss within the provisions of such insurance contract, any person who assisted or in any manner aided directly or indirectly in the procurement of such insurance contract is liable to the insured for the full amount of the claim or loss in the manner provided by the insurance contract.

SECTION 44. IC 27-7-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. **(a)** Any domestic corporation having:

(1) among its purposes the insuring against loss or damage on account of encumbrances upon or defects in the title to real estate; **and**

(2) a physical office in Indiana;

is hereby authorized to organize under IC 23-1, and any foreign corporation, having among its purposes the insuring against loss or damage on account of encumbrances upon or defects in the title to real estate, is hereby authorized to and may be admitted to do business in this state under IC 23-1. Any domestic or foreign corporation, organized or admitted to do business before or after June 7, 1937, as provided in this section, may engage in business as a title insurance company by complying with the provisions of this chapter.

(b) A domestic corporation admitted to do business as described in subsection (a) shall provide written notice to the department of insurance and all policyholders of a change in location of the domestic corporation's physical office in Indiana, including the address and telephone number of the new location.

SECTION 45. IC 27-7-3-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3.5. **(a) A domestic corporation admitted to do business as described in section 3 of this chapter is subject to the following:**

(1) IC 27-1-7-11.

(2) IC 27-1-6-21.

(3) IC 27-9.

(b) A foreign corporation admitted to do business as described in section 3 of this chapter is subject to IC 27-1-17-9.

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SECTION 46. IC 27-13-2-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 10. (a) A health maintenance organization shall do the following:**

(1) Maintain a physical office in Indiana.

(2) If the health maintenance organization changes the location of the office maintained under subdivision (1), provide written notice to the department of insurance and all subscribers at least thirty (30) days before the location is changed, including the address and telephone number of the new location.

(b) A domestic health maintenance organization operating under this article is subject to the following:

(1) IC 27-1-7-11.

(2) IC 27-1-6-21.

SECTION 47. IC 27-13-34-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 12.** A limited service health maintenance organization operated under this chapter is subject to the following:

(1) IC 27-1-36 concerning risk based capital, unless exempted by the commissioner under IC 27-1-36-1.

(2) IC 27-13-2-10.

~~(2)~~ **(3) IC 27-13-8, except for IC 27-13-8-2(a)(6) concerning reports.**

~~(3)~~ **(4) IC 27-13-9-3 concerning termination of providers.**

~~(4)~~ **(5) IC 27-13-10-1 through IC 27-13-10-3 concerning grievance procedures.**

~~(5)~~ **(6) IC 27-13-11 concerning investments.**

~~(6)~~ **(7) IC 27-13-15-1(a)(2) through IC 27-13-15-1(a)(3) concerning gag clauses in contracts.**

~~(7)~~ **(8) IC 27-13-21 concerning producers.**

~~(8)~~ **(9) IC 27-13-29 concerning statutory construction and relationship to other laws.**

~~(9)~~ **(10) IC 27-13-30 concerning public records.**

~~(10)~~ **(11) IC 27-13-31 concerning confidentiality of medical information and limitation of liability.**

~~(11)~~ **(12) IC 27-13-36-5 and IC 27-13-36-6 concerning referrals to out of network providers and continuation of care.**

~~(12)~~ **(13) IC 27-13-40 concerning comparison sheets of services provided by the limited service health maintenance organization.**

SECTION 48. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2009] IC 27-1-3.5-3; IC 27-1-3.5-3.5; IC 27-1-25-7.5.

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